

APPEAL NO. 171590
FILED AUGUST 22, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 25, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the (date of injury), compensable injury does not extend to a medial meniscus tear of the left knee, headaches, cervical herniations at C4-5, C5-6, and C6-7, cervical radiculopathy, left knee anterior cruciate ligament (ACL) tear, left shoulder sprain, and left shoulder strain; (2) the appellant (claimant) reached maximum medical improvement (MMI) on May 27, 2016; and (3) the claimant's impairment rating (IR) is eight percent. The claimant appealed, disputing the hearing officer's determinations of extent of injury, MMI, and IR. The claimant contends that the evidence established the compensable injury extends to the disputed conditions and she has not reached MMI. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Reversed and remanded.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury in the form of at least a sprain of the left knee, strain of the left knee, contusion of the left eye, contusion to the head, and a cervical strain. The claimant testified she was injured at work when she fell hitting her head on a pole.

EXTENT OF INJURY

In her discussion of the evidence, the hearing officer noted that: "[o]n (date of injury), [the] [c]laimant fell off of a 14-inch platform, landing onto *his* [emphasis added] left ankle, heard a pop and felt immediate pain." As noted above the claimant testified that she was injured at work when she fell hitting her head on a pole. The medical records in evidence reflect that the claimant was injured when she tripped and fell hitting a pole. No records in evidence indicate the claimant alleged an injury to her ankle or fell off of a platform. The claimant sought medical treatment on the date of the injury. The initial medical records reflect that the claimant sustained a blow to the head and was complaining of a headache. A CT scan of the brain was ordered and a clinical impression of closed head injury was given. The physical examination noted a large hematoma on the left forehead of the claimant. The hearing officer mischaracterized and misidentified the description of the claimant's mechanism of injury. In this case

there is no evidence to support the hearing officer's description of the claimant's mechanism of injury as falling off of a 14-inch platform and landing on her left ankle.

Because the hearing officer misstated the evidence of the mechanism of injury, we reverse the hearing officer's determination that the (date of injury), compensable injury does not extend to a medial meniscus tear of the left knee, headaches, cervical herniations at C4-5, C5-6, and C6-7, cervical radiculopathy, left knee ACL tear, left shoulder sprain, and left shoulder strain and remand the extent-of-injury issue to the hearing officer to make a determination consistent with the evidence.

MMI/IR

We have reversed and remanded the extent-of-injury issue to the hearing officer for further consideration. Accordingly, we also reverse and remand the issues of MMI and IR for further consideration after a full determination of the extent-of-injury issue has been made.

SUMMARY

We reverse the hearing officer's determination that the (date of injury), compensable injury does not extend to a medial meniscus tear of the left knee, headaches, cervical herniations at C4-5, C5-6, and C6-7, cervical radiculopathy, left knee ACL tear, left shoulder sprain, and left shoulder strain and remand the extent-of-injury issue to the hearing officer to make a determination consistent with the evidence.

We reverse the hearing officer's determination that the claimant reached MMI on May 27, 2016, and remand the MMI issue to the hearing officer.

We reverse the hearing officer's determination that the claimant's IR is eight percent and remand the IR issue to the hearing officer.

REMAND INSTRUCTIONS

On remand the hearing officer is to make a determination of the extent of the compensable injury based on the correct mechanism of injury as supported by the evidence as well as the other evidence admitted in this case.

After making a determination of the extent of the compensable injury, the hearing officer is to make a determination of MMI and IR based on the evidence. If there is not a certification of MMI/IR in evidence that rates the conditions the hearing officer determines to be part of the compensable injury, correspondence should be sent to the designated doctor, (Dr. Y), if he is still qualified and available to be the designated doctor.

If Dr. Y is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury. The certification of MMI should be the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated considering the physical examination and the claimant's medical records. The assignment of an IR is required to be based on the claimant's condition as of the MMI date considering the medical records and the certifying examination and according to the rating criteria of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides) and the provisions of 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)).

The parties are to be provided with the designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on the claimant's MMI and IR for the (date of injury), compensable injury.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge